

U.S. Department of
Homeland Security

**United States
Coast Guard**



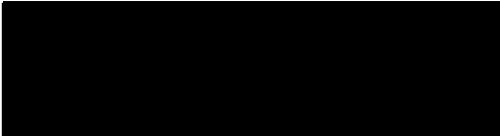
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2446 4548

5890/DWHZ
1 May 2012

Plumbing Consultants, Inc.



Re: Claim Number: N10036-1720

Dear Mr. Barksdale:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-1720 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you find that you will be unable to gather particular information within the time period, you may include a request for an extension of time for a specified duration with your reconsideration request.

Reconsideration of the denial will be based upon the information provided. A claim may be reconsidered only once. Disposition of that reconsideration in writing will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include claim number N10036-1720.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100



Claims Adjudication Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form
CC: Diana Moreland
24640 US Highway 331 S, Santa Rosa Beach, FL 32459
Certified Mail #: 7011 1570 0001 2446 4555

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1720
Claimant	Plumbing Consultants, Inc.
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$814,436.60

FACTS

On or about 20 April 2010, the Mobile Offshore Drilling Unit Deepwater Horizon (Deepwater Horizon) exploded and sank in the Gulf of Mexico. As a result of the explosion and sinking, oil was discharged. The Coast Guard designated the source of the discharge and identified BP as a responsible party (RP). BP accepted the designation and advertised its OPA claims process. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 15 March 2012, Arthur S. Barksdale IV, Esquire, on behalf of Plumbing Consultants, Inc., (collectively the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$814,436.60 in loss of profits damages resulting from the Deepwater Horizon oil spill.¹

At the time of the oil spill, the Claimant was a plumbing contractor in Santa Rosa Beach, Florida owned and operated by Diana Moreland.² The Claimant alleged losses of \$151,103.00 in 2010 and further losses of \$130,247.84 in 2011 as a result of the Deepwater Horizon oil spill.³ The Claimant asserts that after substantial losses in 2009, the industry was set to rebound in 2010 before the oil spill significantly impacted construction.⁴

In order to calculate her losses, the Claimant subtracted 2010 and 2011 profits from 2008 profits, then added the results and multiplied by an "industry effect multiplier" of 36 to reach the claimed total of \$814,436.64.⁵

APPLICABLE LAW

Under the Oil Pollution Act of 1990 (OPA), at 33 U.S.C. § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into or upon the navigable waters or adjoining shorelines or the exclusive economic zone, as described in Section 2702(b) of OPA.

The OSLTF which is administered by the NPPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. One type of damages available pursuant to 33 C.F.R. § 136.231 is a claim for loss of profits or impairment of earning capacity due to injury to or destruction of natural resources.

Under 33 C.F.R. § 136.233 a claimant must establish the following:

¹ Law Firm Claim Cover Letter, signed 15 March 2012.

² Hardship Letter from the Claimant, signed 11 November 2011.

³ Lost Earnings/Income Worksheet, dated 17 January 2012.

⁴ Hardship Letter from the Claimant, signed 11 November 2011.

⁵ Lost Earnings/Income Worksheet, dated 17 January 2012.

- (a) That real or personal property or natural resources have been injured, destroyed, or lost.
- (b) That the claimant's income was reduced as a consequence of injury to, destruction of, or loss of property or natural resources, and the amount of that reduction.
- (c) The amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax returns, financial statements, and similar documents. In addition, comparative figures for profits or earnings for the same or similar activities outside of the area affected by the incident also must be established.
- (d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant received as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

Under 33 C.F.R. § 136.105(a) and § 136.105(e)(6), the claimant bears the burden of providing to the NPFC, all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

Under 33 C.F.R. § 136.235, the amount of compensation allowable for a claim involving loss of profits or impairment of earning capacity is limited to the actual net reduction or loss of earnings or profits suffered. Calculations for net reductions or losses must clearly reflect adjustments for—

- (a) All income resulting from the incident;
- (b) All income from alternative employment or business undertaken;
- (c) Potential income from alternative employment or business not undertaken, but reasonably available;
- (d) Any saved overhead or normal expenses not incurred as a result of the incident; and
- (e) State, local, and Federal taxes.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, the Claimant submitted the following documentation:

- Law Firm Claim Cover Letter, signed 15 March 2012;
- NPFC Authorization Agreement, signed 7 March 2012;
- Email from Firm With Claim Documents Attached, 15 March 2012;
- Copy of GCCF Full Review Final Claim, signed 24 October 2011;
- Lost Earnings/Income Worksheet, 17 January 2012;
- Copy of Claimant's Drivers License;
- Hardship Letter from the Claimant, signed 11 November 2011;
- Letter of Support from J. Mark Breaux of Breaux Construction Co, signed 10 January 2012;
- Letter of Support from David Reynolds of Baywoods Development Group, signed 10 January 2012;
- Walton County Contractor License for Claimant Company, expiration 31 August 2012;
- Certificate of Registration for Claimant Company;
- Articles of Incorporation for Claimant Company;
- Copy of Certificate of Incorporation, dated 15 April 1994;
- Copy of 2008 Tax Return with Schedules and Attachments;

- 2008 Profit & Loss Statements;
- Copy of 2009 Tax Return with Schedules and Attachments;
- 2009 Profit & Loss Statements;
- Copy of 2010 Tax Return with Schedules and Attachments;
- 2010 Profit & Loss Statements;
- 2011 Profit & Loss Statements;
- Copy of GCCF Claim Signature Page, signed 25 October 2011;
- GCCF Determination Letter on Final Payment Claim, dated 20 February 2012.

On 24 January 2012, the Claimant presented a Full Review Final (FRF) claim to the RP/GCCF, seeking loss of profits and wages damages in the amount of \$814,436.64.⁶ The Claimant was assigned Claimant ID 1639570 and the FRF claim was assigned claim # 9560254.⁷ The RP/GCCF made a final payment offer of \$23,500.00,⁸ but the Claimant did not accept.⁹

On 15 March 2012, the Claimant submitted this claim to the NPFC, seeking \$814,436.60 in loss of profits and impairment of earning capacity damages.¹⁰ The NPFC may adjudicate this claim to the extent that these damages have first been presented to the RP/GCCF.¹¹ Because the Claimant has presented these damages first to the RP/GCCF in an amount equal to the amount now presented to the NPFC, this determination may properly address the entirety of the claim now before the NPFC, in the amount of \$814,436.60.

NPFC Determination

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that any loss of income was due to injury, destruction or loss of real or personal property or of a natural resource as a result of a discharge or substantial threat of a discharge of oil. Under 33 C.F.R. § 136.105(a) and § 136.105(e)(6), the claimant bears the burden of providing to the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support this claim.

In order to prove a claim for loss of profits damages, a claimant must provide documentation sufficient to prove (1) that the Claimant sustained an actual financial loss, and (2) that the loss was caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

The financial documentation provided by the Claimant fails to support the Claimant's assertion that the Deepwater Horizon oil spill caused a loss of income in 2010. In 2009, the year prior to the oil spill, the Claimant's business sustained a significant decline in revenue. Financial records show that the Claimant's business made \$391,241.00 less in 2009 as compared to 2008, a decrease in revenue of approximately 75%.¹² The Claimant contends that the industry was poised for a rebound in 2010 that was negated by the oil spill. However, the NPFC's calculations show that the Claimant's business continued its downward trend in the early part of 2010 before the oil spill as compared to the same time period in 2009, sustaining revenue losses of \$16,472.00.¹³

⁶ GCCF United States Coast Guard Report, 17 April 2012.

⁷ GCCF United States Coast Guard Report, 17 April 2012.

⁸ GCCF Determination Letter on Final Payment Claim, dated 20 February 2012.

⁹ GCCF United States Coast Guard Report, 17 April 2012.

¹⁰ Law Firm Claim Cover Letter, signed 15 March 2012.

¹¹ 33 C.F.R. § 136.103(a).

¹² 2008 and 2009 Profit & Loss Statements.

¹³ 2009 and 2010 Profit & Loss Statements.

Furthermore, the Claimant does not provide evidence to indicate that any particular job(s) were lost or cancelled as a result of the spill. The Claimant included letters from other contractors in the area asserting a general loss of business and decline in the industry, but does not provide evidence of any specific lost projects or work cancelled because of the oil spill.

The Claimant indicated that her claimed damages to the NPFC included future damages based on the use of a multiplier in her sum certain calculation. However, under 33 CFR § 136.235, “the amount of compensation is limited to the actual net reduction or loss of earnings *suffered*.”¹⁴ Therefore, the Claimant cannot be compensated for any prospective damages that might accrue in the future. Consequently, to the extent any losses claimed by the Claimant are for future losses, those damages are non-compensable under OPA and are therefore denied.

This claim is denied because the Claimant failed to meet his burden to demonstrate (1) that she sustained a loss in the amount of \$814,436.60, (2) that the alleged loss is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil, and (3) any claimed future losses are not OPA compensable damages.

Claim Supervisor:  *Adjudication Division*

Date of Supervisor's Review: *5/1/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

¹⁴ Emphasis added.